

Thomas J. Hayes

July 16, 2006

Federal Trade Commission:

Dear Sir or Madam,

I am writing to express my concerns with the FTC's proposed Business Opportunity Rule R511993.

I became a Herbalife Distributor at age 17 while still a senior in High School. I saw an opportunity that didn't exist elsewhere – namely the ability to work around my study schedule and build up a flexible income that would help me pay for college. My assessment was correct. I was able to start my Herbalife business with less than \$100 and help pay for a substantial portion of my college education at Columbia University in NYC.

Now approaching 29 years old, I have been using and selling Herbalife products for nearly twelve years. This is my primary source of income. When initially joining Herbalife I never imagined it would blossom into my career, and yet – it has been a very rewarding one at that. Herbalife takes very good care of its distributors. I've been able to take my family on vacations paid for by the company. I've developed public speaking skills and the ability to speak effectively in front of large groups of people. I know what it is to start a business with very little money and build up a nice enterprise from sweat equity and a dream.

If the FTC's proposed Business Opportunity Rule R511993 was passed, I can say unequivocally, I would be out of business within 12 months - and put my family at significant risk. Twelve years of sacrifice, hard work, long hours and commitment would be destroyed instantaneously. One example is the idea that I would have to obtain the written disclosure statement from Herbalife before sponsoring a new distributor. The statement would contain, among other things, the names and contact information for 10 prior purchasers who live closest to the prospective purchaser. This would not only create doubt in the potential prospect's mind, but it would destroy existing business already in place. For example, imagine if you purchased an insurance contract from Geico, but for Geico to sell future contracts they had to list the contact information of ten existing customers so a prospective customer could check their satisfaction level. You are happy with Geico, but all of the sudden, random people start contacting you to see your satisfaction level with your Geico plan. After the first five to ten calls, even if Geico offered the best product in the world, you would cancel simply because you didn't have time for the unsolicited intrusions. Even worse, what if you didn't have time to read Geico's 20 page legal disclosure while sitting at the car dealer, and you actually signed up for it without reading all of the fine print? Then as all of these strangers call you, they start asking you pointed questions as if you are Geico, and you have no interest in doing Geico's PR for them. You would probably get irritated at the prospective Geico client

and cancel your Geico policy to avoid future inconvenience. Not to mention, you start thinking about different aspects of the policy that were not even relevant when you purchased it. You wanted “car insurance” to drive your new car off the lot. Now you’re thinking about what happens if you crash pulling out of the lot versus how happy your family is going to be with the new car. This reminds me of the McCarthy hearings – where the accusation of being a communist was just as bad as actually being one – if not worse. It is a curved process focused to draw attention to why something will not work versus why it will. Imagine if Christopher Columbus tried to raise capital for his voyage by emphasizing the risk of failure versus the benefits of success? Neither of us would be here right now.

Furthermore, let’s take another aspect of the proposed Business Opportunity Rule R511993 where I would have to wait seven days before my prospect would be allowed to sign the Distributor Application or make any payment related to the opportunity. What ever happened to free will and personal responsibility? What if you had to wait 7 days every time you wanted to invest in a stock? You had to read the 50-100 page report from the previous year, sign off, and then invest. What if you had to declare your intention to eat at a new restaurant 7 days before you were permitted to have a table, and furthermore, you had to call their previous customers to see if they got sick while eating there?

It takes a lot of courage for someone to make a positive step in their life and shoot for something better. This country was founded on people taking risk and deriving benefit commensurate with that risk. If the FTC thwarts the entrepreneurial spirit of this country at the grass-roots level – where people can start from virtually nothing – and build a better life, it’s the beginning of the end of our country’s greatness. We’re spending a great deal of money fighting for freedom abroad while crushing freedom domestically at an even greater cost. Direct sales, simply stated, is, “the average person’s best chance to start from wherever they are and build a better life.” That type of equal opportunity advancement possibility exists in no other industry.

On the flip side, I do see the point of view of the FTC’s goal of preventing consumer fraud and misrepresentation. The consumer is protected, not only by the low entry fee of joining, but by Herbalife’s refund policy. The greatest risk lies with the existing distributor who invests time, energy, effort, and money to help a new person grow their business – who may or may not be committed because they have very little invested (in most cases less than \$100).

In closing, I implore you to revisit this proposal and revise it to eliminate these undue burdens on direct sellers. Resources would be better invested in identifying and punishing the few fly by night operators that misrepresent their opportunity to consumers. In any industry, company or organization, you will always find a few bad seeds. Punishing the good, hardworking people who have built their businesses on solid ground and sacrificed everything to build a better life goes against the “American Dream,” and is against the progress of our great nation.

Sincerely,

Tom Hayes